

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of:

Petition of Verizon for Forbearance
Under 47 U.S.C. § 160(c) from
Enforcement of Certain of the
Commission's Recordkeeping and
Reporting Requirements.

WC Docket No. 07-273

**REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA**

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The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these reply comments in response to the Federal Communications Commission's (FCC or Commission) Public Notice, issued December 18, 2007, in the above-captioned docket. In the Public Notice, the Commission sought comment on Verizon's Petition requesting forbearance under 47 U.S.C § 160 (c), on behalf of its incumbent local exchange carrier (ILEC) affiliates, from certain of its recordkeeping and reporting requirements (Petition).¹ The requirements that are the subject of this Petition include: (i) the Automated Reporting Management Information

¹ Petition of Verizon for Forbearance from Enforcement Under 47 U.S.C. § 160(c) of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273 (filed November 26, 2007).

System (“ARMIS”) reporting rules; (ii) the Commission’s affiliate transaction and related rules (“affiliate transaction rules”); (iii) Part 65, Subpart E and Part 69, Subparts D and E (“rate-of-return reporting rules”); and (iv) the Commission’s property record and related rules (“property record rules”). The Petition also seeks limited forbearance from 47 U.S.C. 5 254(k) to the extent this provision contemplates the accounting methodology for assets and services transferred or provided between an incumbent local exchange carrier (“LEC”) and any of its nonregulated affiliates embodied in the Commission’s affiliate transaction rules.

The CPUC filed opening comments urging the Commission to deny Verizon’s petition for forbearance from ARMIS reporting requirements and will not repeat that discussion here. The CPUC notes here, however, our support for the position advanced by several other parties who urge the Commission to deny Verizon’s request to preempt state reporting requirements. In addition, the CPUC here recommends that the FCC deny Verizon’s request to be relieved of affiliate transaction rules because granting such relief would not be in the public interest. Without these rules, California, and other states would have difficulty meeting their oversight obligations.

I. THE FCC SHOULD NOT GRANT VERIZON'S PETITION

As have a number of other states, the CPUC has relied on and will continue to rely on the FCC's affiliate transaction rules and related reporting requirements to make important regulatory policy decisions and to establish rules for California.

A. California Has Deferred to FCC Affiliate Transaction Rules and Eliminated California-Specific Rules for Affiliate Transactions and Related Reports

In the last few years, the CPUC has taken significant steps to streamline its regulatory process. In particular, in the CPUC's Uniform Regulatory Framework ("URF") Decision (D.06-08-030), this agency relaxed regulation of the retail telecommunications service offerings of the four major California ILECs, including Verizon. Additionally, as part of the streamlining effort, the CPUC's stated its intent to rely on FCC standard accounting practices and affiliate transaction rules. Verizon itself, as a party to the URF proceeding, asked the CPUC to end California-specific affiliate transaction rules, and instead to base California rules on those adopted by the FCC. (*See* Opening Comments of Verizon on Proposed Decision at 12 (Aug. 15, 2006). The CPUC adopted Verizon's recommendation, and eliminated California's affiliate transaction rules in carriers' future filings and reports made to the CPUC. Specifically, the CPUC concluded as follows:

We shall defer to the FCC's standard accounting practices and affiliate transaction rules for California carriers. We will no longer require a set of regulatory accounts with California jurisdictional adjustments. Unless subsequently ordered otherwise, AT&T, Verizon, SureWest, and Frontier should follow the FCC's standard accounting practices and affiliate

transaction rules in all filings and reports made to this Commission.²

The CPUC has elected to rely on FCC accounting and affiliate transaction rules and the utility reports submitted to the CPUC demonstrating carrier adherence to those rules. If the FCC grants Verizon's request, and concomitantly eliminates those rules, the CPUC's will no longer be able to rely on the FCC's rules.

Further, Verizon has affiliates providing wireless and video services, which offer inter-modal alternatives to the ILECs', including Verizon's, traditional wireline services. Without affiliate transaction rules, Verizon could shift revenues from less competitive ILEC services to services that are more competitive, or could adjust rates to increase accumulation of lifeline and high-cost-fund support. Such strategies could well dampen the evolution of competition that is unfolding among intermodal providers. Because the CPUC has deregulated ILEC retail prices, except for basic residential service³, the ILECs in California now have greater pricing flexibility. Both AT&T and Verizon have raised prices for a number of services, in California

² See *Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities (R.05-04-005)*, Decision (D.) 06-08-030, Ordering Paragraph 18.

³ The current cap on basic residential service rates for both AT&T and Verizon in California will be lifted January 1, 2009.

and nationally, as has been reported in both the trade and mainstream media. The FCC's affiliate transaction reports provide data that may help to detect whether an ILEC is improperly cross-subsidizing its competitive services.

B. THE CPUC STILL NEEDS AFFILIATE TRANSACTION RULES TO IMPLEMENT THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT (DIVCA) OF 2006 AND OTHER LEGISLATIVE REQUIREMENTS

The California Digital Infrastructure and Video Competition Act of 2006 (DIVCA)⁴ requires the CPUC to monitor telephone rates to ensure that the telecommunications companies that obtain video franchises in California do not use a portion of their revenues from regulated services to subsidize their provision of video services.⁵ In a CPUC proceeding to implement DIVCA, the CPUC concurred with Verizon that it would rely on both the state and FCC affiliate transaction rules, and that no additional rules would be needed to ensure such responsibilities.⁶

California telecommunications companies already are subject a variety of measures designed to prevent unlawful cross-subsidization between telecommunications costs and non-telecommunications costs. These measures, imposed

⁴ Digital Infrastructure and Video Competition Act of 2006 (DIVCA), Assembly Bill (AB) 2987 (Ch. 700, Stats. 2006).

⁵ D.07-03-014, *mimeo*, at 183.

⁶ *Id.* at 186-187.

by both the federal and state government, obviate the need for additional rules to prevent financing of video deployment with rate increases for stand-alone, residential, primary line, basic telephone services.

With respect to the federal government, the FCC's Part 64 regulations require the accounting separation of telecommunications costs from the non-telecommunications costs for telecommunications utilities, such as Verizon, AT&T, and SureWest. These communications accounts also are subject to independent biennial audits. Verizon's data suggests that there is no merit in TURN's attempt to cast doubt regarding the maintenance of these accounts.⁷

In seeking forbearance from FCC affiliate transaction rules, Verizon's petition not only contradicts its position in the CPUC DIVCA proceeding, but also would remove a tool the CPUC has anticipated using to enforce compliance of DIVCA requirements.

In addition, as the CPUC noted in its DIVCA implementation decision, the CPUC has been given the responsibility by California Public Utilities Code §§ 709.2 and 495.7 to ensure that there would be no improper cost allocation among intrastate services or through any other unlawful cross-subsidization(s).⁸ Eliminating FCC affiliate transaction rules will make it

⁷ *Id.* at 186-187; footnote omitted.

⁸ Section 709.2 required that the CPUC examine the possibility of cross-subsidization in authorizing intrastate interexchange telecommunications competition. Section 495.7 requires the CPUC to tariff basic residential services, entailing a special review of price increases that could lead to cross-subsidization.

more difficult for the CPUC to enforce these legislative requirements, cited above.

The affiliate transaction rules, which are detailed in Parts 32 and 64 of the FCC's rules, outline the process that a carrier must use to value assets and services when transferring assets and services to or from an affiliate.⁹ As NASUCA noted in its comments, Verizon's strategic and business decisions to pursue multiple lines of business create commensurately multiple opportunities for cross-subsidization, making the FCC's affiliate transaction rules particularly important to protect consumers of basic non-competitive services:

Verizon asserts that 'these rules have a particularly significant impact on Verizon, which has dozens of related entities that provide a variety of products and services including wireless (Cellco Partnership d/b/a Verizon Wireless), enterprise (Verizon Business Services), and support services such as billing and collection and real estate management.' Yet Verizon's strategic and business decisions to pursue multiple lines of business create multiple opportunities for cross-subsidization, making affiliate transaction rules particularly important to protect consumers of basic non-competitive services. ¹⁰

⁹ Petition, Attachment 1, 47 C.F.R. PART 32, 32.23 – Nonregulated activities to the extent the rule requires a carrier to comply with Affiliate Transaction Rules); PAR 64 – Allocation of Costs, including affiliate transaction rule cost allocation manuals.

¹⁰ Comments of NASUCA, at 11-12; footnotes omitted.

Given Verizon's enhanced opportunities to cross-subsidize, the FCC should not eliminate its affiliate transaction reporting requirements.

C. The Issue of Whether to Eliminate the Affiliate Transaction Rules Should Not be Addressed In a Piecemeal Fashion

In reply comments submitted in response to AT&T's petition also seeking forbearance from enforcement of some of the FCC's ARMIS reporting requirements¹¹, the CPUC has agreed with other parties that if the FCC is going to revamp its reporting requirements, it should do so through a broader rulemaking proceeding and not on a piecemeal basis such as through these various petitions for forbearance.¹² The CPUC noted that a rulemaking proceeding would allow the Commission to address comprehensively the implications of any change to the existing reporting requirements. A rulemaking proceeding is also more appropriate because the Petition raises issues that could potentially affect other ILEC affiliates. These same arguments equally apply to Verizon's petition.

Alternatively, the FCC should adopt the proposal of the New York Department of Public Service (NYDPS) that Verizon's request be referred to

¹¹ Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements, FCC WC Docket No. 07-139, (filed June 8, 2007).

¹² CPUC Reply Comments In the Matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements, FCC WC No. Docket 07-137, filed September 19, 2007, at 10.

the Federal-State Joint Board on Separations for additional review. The CPUC agrees with the NYDPS' rationale for its proposal:

This forbearance request on behalf of Verizon is complex and impacts both state and federal regulators. As such, the NYPSC as well as other parties should be given additional opportunity to review and analyze those impacts and the forbearance process is an inappropriate vehicle in which to do so. Additional state and federal feedback is needed in order to give proper perspective.¹³

D. THE COMMISSION SHOULD NOT PREEMPT STATE REPORTING REQUIREMENTS.

Verizon also asks that the FCC make clear that states may not lawfully impose recordkeeping and reporting requirements that are inconsistent with the Commission's decision to forbear.¹⁴ The FCC should deny this request. The CPUC concurs with the comments of NASUCA and NYDPS that there is not precedent or authority for Verizon's proposal. The forbearance statute reads in relevant part as follows:

[A] state commission may not continue to apply or enforce any provision of this chapter that the Commission has determined to forbear from applying under subsection (a) of this section. 47 U.S.C. § 160.¹⁵

¹³ Comments of New York State Department of Public Service at 2.

¹⁴ Petition at 5.

¹⁵ Comments of NYDPS at 2-3; footnotes omitted.

II. CONCLUSION

The Commission should deny Verizon's Petition because forbearance is not warranted at this time, nor would it be in the public interest. The CPUC has deferred to the FCC's affiliate transaction rules to carry out its regulatory responsibilities. In addition, the FCC also should reject Verizon's request to preempt state reporting requirement because it would be unlawful.

Respectfully submitted,

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